

## **REMARKS**

Claims 51-70 are pending in this application. Applicant has amended claims 51,  
5 54, 58, 59, 60, and 63 to better define the scope of the invention.

In an office action dated 03/04/2009, Examiner has rejected claims 51-70 for two different reasons. Each of these rejections is responded to as follows:

10           1.       Examiner has rejected claims 51-70 under 35 U.S.C 112, first paragraph as failing to comply with the written description requirements.

Examiner states, The claims(s) currently recites the limitation “a merchant sales terminal adapted to wirelessly transmit a terminal identification and a payment amount  
15 for a specific sales transaction.” The specification as originally filed states that “the payment system includes a central system, a wireless device belonging to a customer, a payment card generated by the central system and sent to the customer, and an existing bankcard, “but no merchant sales terminal adapted to wirelessly transmit a terminal identification and a payment amount for a specific sales transaction, as now  
20 implied.

Applicant reminds the examiner, that the specification and the claims 1-50 as originally filed, covered five different embodiments of a secure and private payment system, some using a wireless device and some using a secure payment card.  
25 Examiner in an office action dated 8/22/2006 restricted the claims to three different categories. Further, in an office action dated 5/31/2007, examiner further restricted the selected claims in the first restriction into four different categories. Applicant due to these restriction requirements choose the set of claims that corresponds to one of these embodiments of a secure and private payment system. Claims 51 to 70 are based on  
30 the claims 1-20 as originally filed and elected due to restriction requirements.

Applicant submits that the specification does contain the feature that is being pointed out by the Examiner in the claims 51 to 70 and these claims comply with the 35 USC 112, second paragraph written requirements. Please refer to the specification, Page 8 line 13 to 25, Figure 5B and Figure 5A. This specific specification language is  
5 copied below:

In addition, the interface may consist of a reading element 504 receiving a wireless transmission of the merchant identification 520A and a payment amount 24 from a merchant system 20. The transmission may be wireless infrared commonly used  
10 in many remote control applications such as a television. Figure 5B in conjunction with Figure 5A shows that the merchant system 20, with a serial interface 514, may be connected to an infrared transmission device 512, which generates an area of transmission 516 and which is read by element 504 of the wireless device 12.

Typically, the customer is at a merchant checkout counter and is holding the  
15 device 12 in his hand enabling it to receive the transmission. The system 20 can generate the data for the transmission at the time when the payment amount has been determined and is communicated to the customer to make a payment, allowing the customer to use the device 12 to receive the transmission.

As recited from the specification as above, merchant system 20, system 20's  
20 serial interface 514 and infrared transmission device 512 does teach this specific feature in element (a) of claim 51, element (a) of claim 63 and element (a) of claim 68 and do comply with the 35 USC 112, first paragraph written description requirements. Applicant has also amended the claim language in claims 51 and 63 to make the  
25 feature wording clear.

2. Examiner has rejected claims 51 to 70 under the obviousness rejection 35 USC §103(a) as being unpatentable over Treyz et al and in view of Linehan.

In Treyz, the use of a mobile wireless device/cell phone is to store customer bankcard data and transfer that to a retail merchant terminal at the time of purchase payment transaction.

5 In claim 51, element (a) and (b) teach a merchant sales terminal with means to wirelessly transmit a terminal identification and a payment amount for a specific sales transaction and a wireless device of the customer with means to receive from the sales terminal, the terminal identification and the payment amount specific to the sales transaction;

10 Examiner on page 9 of the 3/4/2009 office action, in responding to the Applicant's arguments characterizes both the Treyz cell phone use and claim 51 use of a cell phone for financial transactions and thus obvious under Graham v. Deere obviousness analysis, misunderstands and misconstrues the invention as in claim 51.

15 In contrast, in claim 51, the use of mobile wireless device/cell phone is different and distinguishable. While both in Treyz and in claim 51, the cell phone use is for conducting "a financial transaction", however, that is where, the similarity stops. These two uses of the cell phone are inherently different.

20 These two uses of the wireless device/cell phone, at the time of retail sales payment transaction, as in Treyz and claim 51 are inherently different and distinguishable for the following reasons.

25 a. In Treyz, bankcard and or account information data is first loaded into the Treyz cell phone by various Treyz means. Then that bankcard and or account information is being transferred from the Treyz cell phone to the Treyz sales terminal. Without first loading the bankcard or account information, the Treyz cell phone is unable to conduct the sales transaction.

b. Treyz by transferring the bankcard or account information to the merchant sales terminal, transfers private and id theft sensitive data to the merchant computer systems for the very high probability of it being stolen from there based on a large number of news items for theft of such data from merchant systems.

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c. Once the Treyz cell phone transfers the bankcard data to the merchant by Treyz cell phone, it is treated no different by the merchant sales terminal than bankcard data transferred by any number of prior art ways such as swiping a bankcard at the retail terminal for processing a payment transaction.

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d. The Treyz cell phone, like the other prior art forms of payments creates a cost burden and a business liability risk for the merchants and their sales systems for receiving, storing, and safeguarding the customer private id theft sensitive data.

15 e. In contrast in claim 51, the bankcard and or account information is not loaded into the cell phone, as there is no need for it in the cell phone. Second, as a consequence the bankcard and or account information is not transferred to the sales terminal, at the time of the transaction thus not transferring private id theft sensitive data to the merchant sales systems.

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f. In contrast, In claim 51, instead of transferring private id theft sensitive data, to merchant systems, the cell phone receives from the sales terminal, the merchant terminal id and payment amount.

25 g. As in claim 51, cell phone use is directed to security and privacy of bankcard and account information by not storing such data in the cell phone and by not transferring such private data and keeping it out of from the merchant systems themselves, from where it has been subjected to theft. Whereas, in Treyz does not teach these features.

30 For the reasons as above, Treyz does not teach or suggest features of claim 51. Applicant does not understand why the examiner is unable to see this inherent difference

in these two types of financial transactions with a cell phone. This difference and distinction is as clear as it can be made by reading Treyz art and reading claim 51.

Applicant requests the examiner to review this distinction for the purpose of  
5 applying the Graham V. Deere obviousness analysis. For those with ordinary skill in the  
Treyz art at the time, there were not those with cognizance of security issues related to  
theft of data from merchant systems. Treyz ordinary skill in the art is directed to loading  
bankcard and account data by various means and transferring such data to a merchant  
sales terminal at the time of the sales transaction. That Treyz ordinary skill in the art at that  
10 time is not on preventing theft of Id theft data from the merchant systems.

Same arguments are applicable to independent claims 63 and 68. These  
features of claims 51, 63 and 68 are neither taught nor fairly suggested by Treyz.  
Linehan teaches four party security protocols for online payment transactions between the  
15 customer computer, customer's card issuing bank, merchant computer, and merchant  
acquiring bank.

These two prior art do not teach singly or in any combination, features as in  
independent claims 51, 63 and 68, for maintaining the privacy and security of customer  
20 private data from the merchant computer system, while making payment transactions at a  
merchant sales terminal.

Therefore, the system claim 51, method claim 63 and system claim 68 are not  
obvious over the cited prior art. Like wise the dependent claims are not obvious either over  
25 these cited arts.

### CONCLUSION

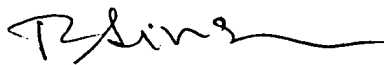
In conclusion, Applicant respectfully asserts that claims 51 to 70 are patentable for the reasons set forth above, and that the application is now in a condition for allowance.

5 Accordingly, an early notice of allowance is respectfully requested. The Examiner is requested to call the undersigned at 310-540-4095 for any reason that would advance the instant application to issue.

Dated this the May 19, 2009

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Respectfully submitted,



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